

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

LEE E. MOORE,

Petitioner,

: Case No. 1:00-cv-023

- vs -

District Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

BETTY MITCHELL, Warden

:

Respondent.

**DECISION AND ORDER OVERRULING OBJECTIONS AND
ADOPTING REPORT AND RECOMMENDATIONS**

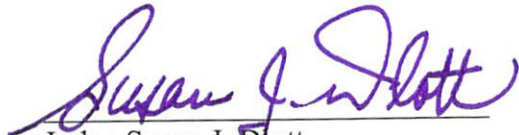
This capital habeas corpus case is before the Court on Petitioner's Objections (Doc. No. 186) to the Magistrate Judge's Report and Recommendations (Doc. No. 183). After reviewing those Objections the Court recommitted the matter to the Magistrate Judge (Doc. No. 187), he filed a Supplemental Report and Recommendations (Doc. No. 190), and Petitioner has filed another set of Objections (Doc. No. 193).

The underlying Motion involved is Moore's Amended Motion for Relief from Judgment or Order Pursuant to Fed. R. Civ. P. 60(b) (Doc. No. 177). Because it is a post-judgment motion, it is deemed referred to the Magistrate Judge under 28 U.S.C. § 636(b)(3), requiring a report and recommendations. The Magistrate Judge recommended, separately for the different Grounds for Relief, that the Motion should be denied (Doc. No. 183, PageID 11031, 11033; Doc. No. 190, PageID 11097).

Under Fed. R. Civ. P. 72(b)(3) and 28 U.S.C. § 636(b)(1), the Court must review de novo any part of a Magistrate Judge's proposed disposition that is properly objected to. Having done

so, the Court ADOPTS the Report and Recommendations and the Supplemental Report and Recommendations in their entirety. Petitioner's Amended Motion for Relief from Judgment is DENIED. However, the Court finds reasonable jurists could disagree with this Court's application of *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309, 182 L. Ed. 2d 72 (2012), and *Trevino v. Thaler*, ___ U.S. ___, 133 S. Ct. 1911, 185 L. Ed. 2d 1044 (2013), and with this Court's application of the law of the case doctrine in resolving that issue and GRANTS Petitioner a certificate of appealability on his Fed. R. Civ. P. 60(b) motion.

IT IS SO ORDERED.



Judge Susan J. Dlott
United States District Court